

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1164 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMNIKLAL VRAJLAL  
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Appearance:

MR HC Raval for Petitioner  
MR DG CHAUHAN for Respondent No. 1  
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/09/1999

ORAL JUDGEMENT

Learned Advocate Mr.Raval is appearing for the petitioner Corporation and Mr.Chauhan is appearing for the respondent workman.

The respondent was working as a Conductor with the petitioner Corporation at Bagasara Depot in Amreli

Division for more than 18 years and during the course of his service as such, on 5.10.1983, while he was on route from Devda to Bagasara, his bus was checked by the Checking Party and it was found that the respondent had not issued tickets to three passengers travelling between Sultanpur to Dherdi. Regular departmental inquiry was initiated against him and after completion of the departmental inquiry, the respondent workman was dismissed from service on 9.2.1984 which action of the petitioner Corporation was challenged by the respondent workman before the Labour Court by filing the reference no.1414 of 1984. Before the Labour Court, the respondent was examined and it was deposed by the respondent that he remained unemployed during the intervening period. The petitioner Corporation has not laid any oral evidence before the Labour Court but has produced the papers of inquiry and past records of the respondent workman which was examined by the Labour Court. The Labour Court came to the conclusion that looking to the misconduct alleged to have been committed by the respondent workman, charge of misappropriation was not found to have been proved and at the most it could be said to be a minor negligence on the part of the delinquent in not issuing tickets in time. The Labour Court also observed that the passengers whose statements were recorded by the Checking Staff were not examined during the course of departmental inquiry and except the reporter there was no independent witness examined during the course of the departmental inquiry to prove the misconduct alleged to have been committed by the respondent workman. The Labour Court also considered that there was no dishonest intention on the part of the respondent. After considering all these aspects of the matter, the Labour Court came to the conclusion that the impugned order of punishment is too harsh and it is required to be quashed and set aside while exercising powers under Section 11-A of the I.D.Act. Therefore, the Labour Court directed the petitioner Corporation to reinstate the respondent workman with continuity of service and with full back wages for the intervening period under its impugned award dated 21.8.1986.

Mr.Raval, Learned Advocate appearing for the petitioner Corporation has submitted that the Labour Court has erred in directing reinstatement of the respondent workman with full back wages. It was submitted by him that the Labour Court has observed that there was minor negligence on the part of the respondent workman in not issuing tickets to certain passengers when the bus was checked by the checking staff. At the time of checking there were only 18 passengers in the bus and 13 passengers were found with tickets and remaining 5

passengers were not found with tickets. He also submitted that the Labour Court ought to have taken into consideration that the number of passengers were found less than the actual capacity of the bus at the time of checking and therefore, the Labour Court ought not to have directed the petitioner Corporation to reinstate the respondent workman with full back wages. He submitted that the Labour Court ought to have imposed some punishment while exercising powers under Section 11-A of the I.D. Act. He further submitted that the Labour Court had erred in not considering the past record of the respondent workman. In past about 9 defaults were committed by the respondent and no major penalty has been imposed upon the respondent workman. The respondent was having 18 years of service as Conductor on the date of dismissal. The only question which is required to be examined in this petition is as to whether the passenger is required to be examined in the departmental proceedings or not in view of the decision of the Apex Court reported in AIR 1977 SC Pg.1512, in case of State of Haryana Vs. Ratan Singh. During the course of hearing, a contention has been raised by the Learned Advocate for the petitioner that if the workman is reinstated with continuity of service and full backwages then there will be no punishment imposed upon the workman. He submitted that some punishment is required to be imposed on the workman in view of the observation made by the Labour Court that there is minor negligence on the part of the respondent workman. Though the Labour Court has made the observation as aforesaid, ultimately, the Labour Court has committed an error in not imposing any punishment upon the workman. I am of the opinion that Mr.Raval is justified in submitting that some punishment should be imposed upon the respondent workman in light of the misconduct committed by him. I am of the opinion that it would be just and proper if 50% of the back wages for the intervening period are required to be denied by way of punishment. As per the decision reported in AIR 1984 SC Pg.976 and 1994 2nd LLJ, 1113, denial of some part of backwages to be considered as punishment when some misconduct is found to be proved against the workman. Considering the entire records and submissions made from both the sides, I am of the opinion that keeping in view the minor negligence on the part of the respondent workman only 50% of the back wages should be denied and rest of the award passed by the Labour Court should be confirmed. The impugned award of the Labour Court is required to be modified to that extent. Accordingly, I pass the following order:-

The petition is partly allowed. The petitioner Corporation is directed to reinstate the respondent workman with continuity of service and 50% of the backwages with all other consequential benefits. The petitioner Corporation is further directed to pay to the respondent workman an amount of 50% of the backwages within three months from the date of receipt of this order. The award passed by the Labour Court shall stand modified to that extent. Rule is made absolute to the aforesaid extent with no orders as to costs.

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